



Internal Revenue Service
Small Business and Self-Employed
Taxpayer Education and Communication



Tax Information for Small Businesses

Consider it Done



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Construction Independent Contractor or Employee?



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Worker Classification (Who are employees?)



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4 Classification of Workers

- Independent Contractors
- Common-law Employees
- Statutory Employees
- Statutory Nonemployees



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Common-Law Employees

- An individual who performs services for you who is subject to your control regarding what will be done AND how it will be done.
- It does not matter that you give the employee freedom of action; what matters is that you have the **RIGHT TO CONTROL** the details of how the services are performed.



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Corporate Officers

- Generally, considered employees of the corporation
- Not considered an employee if:
 1. The officer does not perform any services or performs only minor services.
 2. The officer is not entitled to receive, directly or indirectly, any remuneration.



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Independent Contractor

- An individual who performs services for you but is NOT under your DIRECT control.
- You the contractor have the right to control and direct ONLY the result of the work and not the means and methods of accomplishing the result.



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Statutory Employees

- Independent contractors under common law, which are treated as employees by statute for Social Security and Medicare taxes
- Four categories
- Income tax is not withheld from statutory employees
- FUTA is paid on Category 1 & 4 of following list



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Statutory Employees (cont'd)

1. Agent (commission) drivers who deliver food, beverages (other than milk), laundry or dry cleaning for someone else
2. Full-time life insurance salespersons



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Statutory Employees (cont'd)

3. Home workers, who work by guideline of the person for whom the work is done with materials furnished by and returned to that person or to someone that person designates



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Statutory Employees (cont'd)

4. Traveling or city salesperson (other than an agent-driver or commission driver) who works full-time (except for sideline sales activities) for ONE firm or person getting orders from customers



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Statutory Nonemployees

- Direct Sellers
- Licensed Real Estate Agents



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Statutory Nonemployees (cont'd)

1. Substantially all payments for their services relates directly to sales or output rather than hours worked.
2. Their services are performed under a written contract providing that they will not be treated as employees for Federal Tax purposes.
3. Generally treated as Self-employed.



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Determination can be difficult!
Employee??
Independent Contractor??



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Common Law Rules

Consider Common-law Rules (3 Categories)

1. Behavioral control
2. Financial control
3. Type of relationship of the parties



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Behavioral Control



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Basic Behavioral Control Factors

- Type of instruction given
- Degree of instruction
- Evaluation systems
- Training provided by the business



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Types of Instructions

1. When and where to do the work?
2. What tools or equipment to use?
3. What workers to hire or to assist with the work?
4. Where to purchase supplies and services?
5. What work must be performed by a specified individual?
6. What order or sequence to follow when performing the work?



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Instructions (cont'd)

Weight must also be given to the ***DEGREE*** to which the instructions say how the job is to be done.



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Instructions (cont'd)

- The more detailed the instructions, the more control the business exercises over the worker.
- More control implies employee.



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Instructions (cont'd)

- Absence of detail in instructions reflects less control.
- Less control implies independent contractor.



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Instructions (cont'd)

- The key fact to consider is whether the business retains the RIGHT to control the worker regardless of whether the business actually exercises that right.



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Instructions (cont'd)

Example:

Jones, a truck driver, agrees to deliver a load of lumber for Adams Building Supply Company.

Upon arriving at the warehouse, Jones is given an address to which the cargo is to be delivered and advised that the delivery must be completed within 5 days.

This is direction of what is to be done rather than how it is to be done and is consistent with Independent contractor status.



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Instructions (cont'd)

Example:

Smith, also a truck driver, does local deliveries for the same company.

The warehouse manager tells Smith what deliveries have to be made, how to load the cargo in the truck, what route to take, and the order in which the cargo is to be delivered.

These are instructions on how the work is to be performed and are consistent with employee status.



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Evaluation System

- If an evaluation system measures details of how the work was performed, then factors point to employee.
- If the evaluation measures end result, the control factors can point to independent contractor or employee.



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Evaluation System

Example:

Bob, a construction foreman, receives his work performance evaluation.

Some of the critical work elements evaluated include: safety management, number of jobs completed on schedule and number of jobs finished within budget.

Because this evaluation is measuring how the electrical jobs are being performed, we have evidence of an employee relationship.



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Training

- Training is a means of explaining detailed methods and procedures to be used in performing a task.
- Periodic or on-going training about procedures to follow and methods to be used indicates that a business wants services performed in a particular manner.
- This type of training is strong evidence of an employer-employee relationship.



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Training (cont'd)

Example:

Bob, our construction foreman, is required to attend training meetings every third Tuesday regarding topics such as corporate mandated reports and safety issues.

On-going training of this type is an indication of an employer-employee relationship.



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Financial Control



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Financial Control Factors

- Is there a significant investment by the worker?
- Does the worker incur unreimbursed expenses?
- Does the worker have the opportunity to make a profit or loss?
- Are the worker's services available to the market?
- What method of payment does the worker receive?



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Financial Control (cont'd)

- Significant investment is evidence that an independent contractor relationship may exist.
- However, a significant investment is not necessary for independent contractor status as some types of work simply do not require large expenditures.



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Financial Control (cont'd)

Example:

John, an independent contractor, cleans windows of new houses for 5 construction companies.

He pays for all his cleaning supplies.

He owns 2 buckets, a couple of long-handled squeegees, an expansion ladder and several rags. His investment is less than \$1,000.

There are no precise dollar limits that must be met in order to have a significant investment.



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Financial Control (cont'd)

- If expenses are not reimbursed, the opportunity for profit or loss exists.
- Fixed ongoing costs incurred regardless of whether work is currently being performed are especially important.



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Financial Control (cont'd)

However--

- employees may also incur expenses
- that are not reimbursed in connection
- with the services they perform for their employer.



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Financial Control (cont'd)

Example:

Brenda, a secretary for Adams Construction, buys erasers, posters and other minor office supplies throughout the year.

She is not reimbursed for these expenses.

Minor expenses incurred by an employee do not indicate an independent contractor relationship.



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Financial Control (cont'd)

- An independent contractor is generally free to seek out business opportunities.
- As a result, independent contractors often advertise, maintain a visible business location and are available for the relevant market.



Financial Control (cont'd)

Method of payment:

- Hourly, weekly, or similar basis for payment in return for labor generally is evidence of an employer-employee relationship.
- A flat fee is generally evidence of an independent contractor, especially if the worker incurs the expenses of performing the services.



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Type of Relationship



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Relationship of the Parties

- Is there a written contract describing the relationship intended?
- Does the business provide the worker with employee-type benefits?
- What is the permanency of the relationship?



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Relationship (cont'd)

- A written contract does not make an employee an independent contractor.
- A written contract can be one factor in showing the parties' type of relationship.



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Relationship (cont'd)

Example:

Adams Construction Co hires Brenda, Anice and Kay to work in their business office. They are paid an hourly wage.

As a condition of employment, Adams makes them sign an agreement saying that they are independent contractors.

A written agreement does not make an employee an independent contractor.



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Relationship (cont'd)

- A worker receiving benefits such as vacation or sick pay, health insurance, and contributions to a pension plan is usually an employee.
- Few businesses would offer such benefits to an independent contractor.



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Relationship (cont'd)

Permanency of Relationship:

- The expectation that the relationship will continue indefinitely, rather than for a specific project or time period, is generally considered evidence of the intent to create an employer-employee relationship.



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Review of Behavioral Control Factors

- Type of instruction
- Degree of instruction
- Evaluation systems
- Training provided by the business



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Review of Key Financial Control Factors

- Significant investment
- Expenses not reimbursed
- Possibility to earn a profit or incur a loss
- Services available to relevant market
- Method of payment



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Review of Type of Relationship Factors

- Written contracts
- Employee-type benefits
- Permanency of relationship
- Perform services that are a key aspect



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Misclassifications

Misclassification of a worker without reasonable basis could result in liability



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Form SS-8

Form SS-8 (Rev. January 2001) Department of the Treasury Internal Revenue Service	Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding	OMB No. 1545-0004
Name of firm (or person) for whom the worker performed services		Worker's name
Firm's address (include street address, apt. or suite no., city, state, and ZIP code)		Worker's address (include street address, apt. or suite no., city, state, and ZIP code)
Trade name	Telephone number (include area code)	Worker's social security number
Telephone number (include area code)	Firm's employer identification number	Worker's employer identification number (if any)

Important Information Needed To Process Your Request

If this form is being completed by the worker, the IRS must have your permission to disclose your name to the firm. Do you object to disclosing your name and the information on this form to the firm? Yes No
 If you answered "Yes" or did not check a box, stop here. The IRS cannot act on your request and a determination will not be issued.
You must answer ALL items OR mark them "Unknown" or "Does not apply." If you need more space, attach another sheet.

A This form is being completed by: Firm Worker; for services performed _____ (beginning date) to _____ (ending date)

B Explain your reason(s) for filing this form (e.g., you received a bill from the IRS, you believe you received a Form 1099 or Form W-2 erroneously, you are unable to get worker's compensation benefits, you were audited or are being audited by the IRS).

C Total number of workers who performed or are performing the same or similar services _____

D How did the worker obtain the job? Application Bid Employment Agency Other (specify) _____

E Attach copies of all supporting documentation (contracts, invoices, memos, Forms W-2, Forms 1099, IRS closing agreements, IRS rulings, etc.). In addition, please inform us of any current or past litigation concerning the worker's status. If no income reporting forms (Form 1099-MISC or W-2) were furnished to the worker, enter the amount of income earned for the year(s) at issue \$ _____

F Describe the firm's business. _____

G Describe the work done by the worker and provide the worker's job title. _____

H Explain why you believe the worker is an employee or an independent contractor. _____

I Did the worker perform services for the firm before getting this position? Yes No N/A
 If "Yes," what were the dates of the prior service? _____
 If "Yes," explain the differences, if any, between the current and prior service. _____

J If the work is done under a written agreement between the firm and the worker, attach a copy (preferably signed by both parties). Describe the terms and conditions of the work arrangement. _____

For Privacy Act and Paperwork Reduction Act Notice, see page 6. Cat. No. 161067 Form SS-8 (Rev. 1-2001)



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Recorded Tax Information (TeleTax)

- 1-800-829-4477
- Topic 762: Independent contractor vs. employee
- Available 24 hours a day, 7 days a week



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THANK YOU!